



ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

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March 22, 2000

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Re: In the Matter of Deployment of Wireline Services Offering Advanced  
Telecommunications Capability, CC Docket No. 98-147; Implementation of  
the Local Competition Provisions of the Telecommunications Act of 1996, CC  
Docket No. 96-98**

Dear Ms. Salas:

Please find attached an original and four copies of the Association for Local Telecommunications Services' Opposition To Petitions For Reconsideration of BellSouth and Bell Atlantic in the above-referenced proceedings.

Sincerely,

Jonathan Askin  
General Counsel  
Association for Local Telecommunications Services

cc: Attached Service List

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

MAR 22 2000

In the Matter of	)	
	)	
Deployment of Wireline Services Offering	)	CC Docket No. 98-147
Advanced Telecommunications Capability	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions of the Telecommunications	)	
Act of 1996	)	

**ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES  
OPPOSITION TO PETITIONS FOR RECONSIDERATION OF  
BELLSOUTH AND BELL ATLANTIC**

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*Attorneys for the  
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Dated: March 22, 2000

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
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Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	

**OPPOSITION TO PETITIONS FOR RECONSIDERATION OF  
BELLSOUTH AND BELL ATLANTIC**

The Association for Local Telecommunications Services ("ALTS"), by its attorneys and pursuant to Commission Rule 1.429,<sup>1</sup> hereby opposes the petitions for reconsideration of the Commission's *Line Sharing Order*<sup>2</sup> filed by BellSouth<sup>3</sup> and Bell Atlantic<sup>4</sup> ("BellSouth Petition" and "Bell Atlantic Petition," respectively). The Commission should dismiss each of these petitions, because the points raised by BellSouth and Bell Atlantic are simply reiterations of arguments already considered and rejected by the Commission, many of which the petitioners themselves had previously argued. The *Line Sharing Order* therefore does not require reconsideration under settled Commission precedent.

**BACKGROUND**

On November 15, 1999, the Commission adopted rules instituting spectrum management guidelines and line sharing obligations pursuant to Section 252 of the Telecommunications Act

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<sup>1</sup> 47 C.F.R. § 1.429; see *Petitions for Reconsideration of Action in Rulemaking Proceedings*, Report No. 2390 (rel. Feb. 28, 2000), 65 Fed. Reg. 12004 (Mar. 7, 2000).

<sup>2</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Docket No. 98-147, FCC 99-355 (rel. Dec. 9, 1999) ("*Line Sharing Order*").

<sup>3</sup> BellSouth Petition for Reconsideration, CC Docket No. 98-147 (Feb. 9, 2000).

<sup>4</sup> Bell Atlantic Petition for Clarification and/or Reconsideration, CC Docket No. 98-147 (Feb. 9, 2000).

of 1996 (“1996 Act”). In the *Line Sharing Order*, the FCC held that line sharing meets the standard for unbundled network elements (“UNEs”) and must be provided by incumbent local exchange carriers (“ILECs”) to any requesting carrier.<sup>5</sup> In addition, the order adopted a three-tiered test for determining whether innovative Digital Subscriber Line (“xDSL”) technologies may be presumed acceptable for deployment by any competitive local exchange carrier (“CLEC”).<sup>6</sup> These rules, crafted by the Commission in order “to promote the availability of competitive broadband xDSL-based services,”<sup>7</sup> were under consideration for almost six months, during which dozens of comments and *ex parte* letters were filed that addressed every aspect of line sharing and spectrum management implementation. The instant petitioners participated extensively in this proceeding.

On February 9, 2000, both Bell Atlantic and BellSouth, among others,<sup>8</sup> filed Petitions for Reconsideration and/or Clarification of several FCC conclusions within the *Line Sharing Order*. In brief, Bell Atlantic seeks reconsideration of (1) the conclusion that CLECs must obtain access to the entire loop, as opposed to the high-frequency portion of the loop, for testing xDSL compatibility,<sup>9</sup> (2) the rule that ILECs must prove in each state commission that removing load coils and repeaters for loops over 18,000 feet will “significantly degrade” voice service,<sup>10</sup> and (3) the adoption of a 180-day line sharing timetable in lieu of a “phased in” implementation

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<sup>5</sup> *Line Sharing Order* ¶ 25; 47 C.F.R. § 51.319(h).

<sup>6</sup> *Line Sharing Order* ¶¶ 195-197; 47 C.F.R. § 51.230.

<sup>7</sup> *Line Sharing Order* ¶ 4.

<sup>8</sup> ALTS notes that AT&T, MCI and NCTA each filed additional petitions for reconsideration and/or clarification of the *Line Sharing Order*. Petition of AT&T Corp. for Expedited Clarification or, in the Alternative, for Reconsideration, CC Docket No. 98-147 (Feb. 9, 2000); Petition for Clarification of MCI WorldCom, CC Docket No. 98-147 (Feb. 9, 2000); The National Telephone Cooperative Association’s and the National Rural Telephone Association’s Petition for Reconsideration and Clarification, CC Docket No. 98-147 (Feb. 9, 2000). ALTS will not comment on the merits of these petitions within this Opposition.

<sup>9</sup> Bell Atlantic Petition at 2-5.

<sup>10</sup> *Id.* at 6-7.

schedule.<sup>11</sup> Bell Atlantic argues that CLEC access to the entire loop is dangerous for voice services, that the burden of proving voice degradation in each state is unfair and onerous for ILECs, and that each ILEC should retain the discretion to implement line sharing according to a schedule suitable for its region. Bell Atlantic therefore argues that a single, nationwide “significantly degrade” standard should govern line sharing, with only the implementation schedule varying on a state-by-state basis.

BellSouth seeks reconsideration of the rule, adopted in the *Line Sharing Order*, that any xDSL technology approved by one state is presumed deployable in every other state. BellSouth argues that each state’s network is different and thus poses different technological parameters for xDSL services, warranting separate showings of xDSL compatibility in every state. BellSouth maintains that the Commission’s rule “shortcut[s] the necessary research and discussion needed to adequately evaluate new technologies.”<sup>12</sup> BellSouth thus seeks an amendment to the rule requiring CLECs to bear the burden of proving separately, in each state, that a new xDSL technology will not significantly degrade existing services.

As is apparent on the face of the petitions, BellSouth’s argument rests on federalist principles that are exactly opposite, to an extent of being comical, to Bell Atlantic’s argument in favor of a federal degradation rule. More importantly, neither Bell Atlantic nor BellSouth raises a new fact, argument, or point of law such that Commission reconsideration of the *Line Sharing Order* is proper. The petitions are therefore unfounded, as well as mutually irreconcilable. ALTS urges the Commission to reject these petitions and to continue rigorous monitoring and enforcement of its line sharing and spectrum management mandates.

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<sup>11</sup> *Id.* at 7-8.

<sup>12</sup> BellSouth Petition at 3.

I. NEITHER PETITION RAISES NEW FACTS OR CIRCUMSTANCES THAT WARRANT COMMISSION RECONSIDERATION OF THE *LINE SHARING ORDER*

Commission rules provide that any party to a proceeding may seek reconsideration of a Commission order on the grounds that new facts not before the Commission within the proceeding require further consideration.<sup>13</sup> Neither petitioner in this case, however, presents the Commission with any new facts. Both simply reiterate arguments already presented during the underlying rulemaking proceeding. Therefore, the Commission should dismiss both the BellSouth and Bell Atlantic petitions on the ground that they offer no new evidence warranting reconsideration.

The Commission has held that “[r]econsideration is appropriate only where the petitioner shows either a material error or omission in the original order or raises additional facts not known or existing until after the petitioner’s last opportunity to present such matters.”<sup>14</sup> Therefore, “[r]econsideration will not be granted for the purpose of debating matters on which we have already deliberated and spoken.”<sup>15</sup> The Commission routinely dismisses petitions for reconsideration and/or clarification for failure to raise facts not considered below.<sup>16</sup> ALTS urges the Commission to dismiss the BellSouth and Bell Atlantic petitions on similar grounds, as they raise duplicative arguments already addressed and rejected by the Commission in the *Line Sharing Order*.

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<sup>13</sup> 47 C.F.R. § 1.106(c); 47 C.F.R. § 1.429.

<sup>14</sup> *Applications of Washington Broadcasting Company For Renewal of Licenses of Stations WJPA (AM)/WJPA-FM, Washington, Pennsylvania*, File Nos. BR-910401YL *et al.*, Memorandum Opinion and Order, FCC 99-252 ¶ 4 (rel. Sept. 23, 1999).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*; *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, MM Docket No. 97-234, Memorandum Opinion and Order, DA 00-445 (Mar. 1, 2000); *Classic Telephone, Inc. Petition for Reconsideration*, CCBPol 96-10, Order on Reconsideration, FCC 99-366 (rel. Nov. 23, 1999); *Applications of Clear Paging, Inc. For Additional Facilities for Paging Service on the 931.6125 MHz Frequency*, File Nos. 2395195 *et al.*, Order, DA 99-2577 (rel. Nov. 18, 1999); *Application of R. Donnie Goodale For Construction Permit For a New FM Station on Channel 277A, Lenoir, North Carolina*, File No. BPH-890615MF, Memorandum Opinion and Order, FCC 94-333 (rel. Jan. 6, 1995).

First, Bell Atlantic's petition for "clarification" in favor of a "phased in" line sharing implementation argues a point that the Commission rejected below. In *ex parte* filed comments, Bell Atlantic urged the Commission not to adopt a federal line sharing timetable lest it "force incumbent carriers to prematurely enter into an ILEC-CLEC line sharing arrangement by allowing incumbent carriers virtually no time to upgrade their systems to accommodate line sharing."<sup>17</sup> BellSouth also filed *ex parte* comments urging the Commission to adhere to the negotiation process outlined in Section 252 rather than impose a separate line sharing implementation schedule.<sup>18</sup> BellSouth argued that such a schedule would "circumvent this statutory obligation and simply mandate an amendment to an agreement with terms and conditions that assume one size fits all."<sup>19</sup> These arguments fully mirror Bell Atlantic's petition, which argues duplicatively that "[c]arriers themselves are in the best position to develop implementation approaches that are amenable and reasonable for all parties."<sup>20</sup> Indeed, the Commission expressly addressed these concerns in the *Line Sharing Order*, finding that although the negotiation process is the proper vehicle for incorporating new UNEs into carrier agreements, state commissions should ensure that line sharing is fully implemented within 180 days of its adoption.<sup>21</sup>

Bell Atlantic does not demonstrate any new circumstance or development that should disturb the Commission's finding on this point. Bell Atlantic's argument is not that the Commission overlooked a material consideration, but only that it disagrees with the Commission's resolution of a disputed issue in the *Line Sharing* proceeding. Therefore, its

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<sup>17</sup> Letter from Bell Atlantic to Lawrence E. Strickling, Chief, Common Carrier Bureau, at 2 (Oct. 21, 1999).

<sup>18</sup> Letter from Kathleen Levitz, Vice President – Federal Regulatory, BellSouth, to Lawrence E. Strickling, Chief, Common Carrier Bureau at 2 (Oct. 15, 1999).

<sup>19</sup> *Id.*

<sup>20</sup> Bell Atlantic Petition at 2.

<sup>21</sup> *Line Sharing Order* ¶ 162.

petition for “clarification” of the Commission’s prescribed schedule for line sharing should be dismissed.

The same principle requires dismissal of BellSouth’s pleas for reversal of the Commission’s conclusion that any xDSL technology successfully deployed in one state is presumed acceptable for deployment throughout the country. Again, BellSouth (as well as Bell Atlantic) raised this argument repeatedly with the Commission in the underlying rulemaking. BellSouth hypothesized in its reply comments that “this approach is flawed because it will fail to identify [network] incompatibilities in at least four respects.”<sup>22</sup> BellSouth explained for several pages the possible harmful consequences of creating a presumption that any xDSL technology will not harm the network. In addition, Bell Atlantic contended that this “‘one size fits all’ presumption will put quality service to end users at risk”<sup>23</sup> and that “[t]he Commission’s interim presumptions rest on the fallacious assumption that the successful deployment of a new technology on a single network, regardless of its scale, scope, location, network architecture, and operational environment, automatically qualifies such technology for deployment on networks nationwide.”<sup>24</sup> BellSouth’s reconsideration argument that “[i]t is improper to assume that each incumbent LEC’s network is engineered on a one size fits all basis” is thus patently repetitive of points already raised before the Commission and expressly rejected.<sup>25</sup>

BellSouth’s instant petition is not only repetitive of earlier arguments, it is in fact time-barred. The FCC adopted its three-tiered spectrum management approach in its March 31, 1999 *First Report and Order* in this docket, wherein it held that “any technology which has been

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<sup>22</sup> Reply Comments of BellSouth Corporation at 28 (July 22, 1999).

<sup>23</sup> Comments of Bell Atlantic at 16 (June 15, 1999).

<sup>24</sup> Reply Comments of Bell Atlantic at 18 (July 22, 1999).

<sup>25</sup> “We reject the argument of certain commenters that the third criterion [presumption of DSL compatibility] will lead to interference in the network, due to differing mixes of deployed technologies in the local networks.” *Line Sharing Order* ¶ 198 (citing BellSouth Reply Comments at 28-30; Sprint Reply Comments at 16-19).



successfully deployed by any carrier without significantly degrading the performance of other services or has been approved by this Commission, any state commission, or an industry standards body is presumed acceptable for deployment.”<sup>26</sup> This decision was a final Commission conclusion and was for all purposes a final rule when adopted. The *Line Sharing Order* did not adopt the “significantly degrade” standard, but rather provided interpretation of that standard in the specific context of xDSL services. Thus, according to Commission rules, BellSouth should have raised its concerns about this rule within the 30-day period for reconsideration of this earlier order,<sup>27</sup> and should not now be permitted to seek reconsideration of a spectrum compatibility standard that is nearly 12 months old. Therefore, the Commission should dismiss BellSouth’s petition as not only duplicative, but untimely.

## II. CLECs MUST OBTAIN ACCESS TO THE COPPER LOOP FOR TESTING IN ACCORDANCE WITH THE NONDISCRIMINATION PRINCIPLES OF SECTION 251

Bell Atlantic asks the Commission to amend its conclusion that CLECs using line-shared loops must obtain access to the loop for testing, suggesting that voice services will be somehow compromised if CLECs have access to the entire loop.<sup>28</sup> This method of testing, called metallic loop testing (“MLT”), is presently the most reliable manner for determining the transmission capabilities of a copper loop. Moreover, MLT is the manner in which ILECs, including Bell Atlantic, presently test line-shared loops. Therefore, the mandate in Section 251 that all elements be provisioned according to nondiscriminatory terms and conditions precludes ILECs from denying the same testing access to CLECs as they afford themselves.<sup>29</sup> For this reason, the

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<sup>26</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 ¶ 67 (rel. Mar. 31, 1999).

<sup>27</sup> 47 C.F.R. § 1.429.

<sup>28</sup> Bell Atlantic Petition at 3-4.

<sup>29</sup> 47 U.S.C. § 251(c)(3).

Commission should dismiss Bell Atlantic's petition for reconsideration, styled as a clarification, that CLECs may not obtain access to the entire loop for testing purposes.

Bell Atlantic has clearly stated to the Commission that it performs MLT testing on its loops to determine their suitability for ADSL line sharing. At the Commission's Line Sharing Forum, held August 31, 1999, every ILEC stated in response to Staff questions that MLT testing is the industry standard for determining line sharing capability. This forum was an open, on-the-record public meeting designed to assist the Commission in its deliberation of the viability of line sharing. Thus, all ILECs that participated in the forum, including Bell Atlantic, must be as bound by their statements to Staff as by their written comments in this proceeding. According to its own admissions, Bell Atlantic presently uses MLT testing for itself when deploying shared loops. It cannot now seek the Commission's permission to do otherwise for CLECs.

Therefore, because Bell Atlantic's request would have a discriminatory effect on any CLEC that requests line sharing, the Commission should dismiss Bell Atlantic's petition.

III. THE COMMISSION NEED NOT RECONSIDER ITS DETERMINATION THAT STATE COMMISSIONS ARE THE PROPER ARBITERS OF VOICE DEGRADATION FOR SHARED LOOPS

Finally, Bell Atlantic urges the Commission to reconsider its rule requiring ILECs to prove in each state that removal of load coils on long loops will degrade voice services over that loop.<sup>30</sup> In support of its petition, Bell Atlantic argues that proving voice degradation in every state "is unnecessary and a waste of valuable resources for all concerned."<sup>31</sup> Yet this showing is precisely what Bell Atlantic's earlier comments to this proceeding would have CLECs do, in order to deploy new and innovative xDSL technologies. In fact, so would BellSouth's petition for reconsideration. If, as Bell Atlantic and BellSouth argue, no local network is "one size fits

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<sup>30</sup> Bell Atlantic Petition at 6-7.

<sup>31</sup> *Id.* at 7.

all,” and each state’s network architecture has unique limits and capabilities, than the Commission’s decision to rest final jurisdiction for determining voice degradation with the states needs no reconsideration.

The *Line Sharing Order* recognizes that load coils, installed by the ILECs on long loops to ensure superior voice quality, may not be necessary on many loops.<sup>32</sup> The Commission also recognized, however, that “in certain circumstances network architecture may necessitate the use of equipment such as loading coils on a particular line[.]”<sup>33</sup> The Commission’s equivocation on this point is understandable, given that the industry standard for deploying load coils on loops over 18,000 feet was developed decades ago, prior to the modern competitive markets for network and customer premises equipment. Thus, the Commission’s decision to defer final determination of voice service degradation to state commissions is a proper exercise of caution in exercising federal jurisdiction.

Further, Bell Atlantic’s argument is so sharply inapposite with BellSouth’s petition that the Commission should doubt the relative merits of each. Bell Atlantic argues that requiring ILECs to prove degradation of voice services in each state is “wholly unnecessary,”<sup>34</sup> while BellSouth insists that CLECs litigate each new xDSL technology in every state to ensure its compatibility with that state’s local network. BellSouth purports to vindicate the rights of state commissions to participate in the review process, while Bell Atlantic seeks to circumvent state review in order to conserve “resources.” Thus, it seems that the petitioners invoke state jurisdiction only when it suits them, not in an effort to protect federalist principles. These tactics are unhelpful to the Commission and merely represent an effort to delay further the deployment of advanced services throughout the nation.

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<sup>32</sup> *Line Sharing Order* ¶ 85.

<sup>33</sup> *Id.*

The Commission's decision was reasonable based on the evidence before it. Bell Atlantic has provided no new evidence to the contrary. Therefore, the Commission should dismiss Bell Atlantic's petition to reconsider the rule that ILECs must prove voice service degradation in any state in which a CLEC requests removal of load coils.

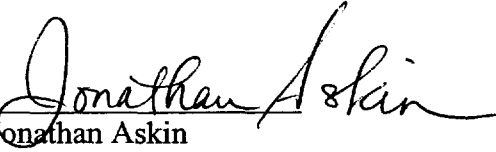
### CONCLUSION

For all these reasons, ALTS respectfully requests that the Commission:

- Deny as duplicative and untimely the BellSouth request for reconsideration of Commission Rule 51.230 with respect to the presumption in favor of deploying innovative xDSL technologies;
- Deny Bell Atlantic's request for reconsideration of the Commission's prescribed line sharing implementation schedule as duplicative;
- Deny Bell Atlantic's request for clarification of the Commission's rule that CLECs must obtain access to an entire copper loop for testing on nondiscrimination grounds; and
- Deny Bell Atlantic's request for reconsideration of the Commission rule requiring ILECs to demonstrate to each state commission that removal of load coils for line sharing purposes significantly degrades voice service.

Respectfully submitted,

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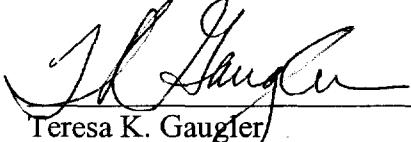
Dated: March 22, 2000

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<sup>34</sup> Bell Atlantic Petition at 6.

## CERTIFICATE OF SERVICE

I, Teresa K. Gaugler, do hereby certify that on this 22nd day of March, 2000, copies of the foregoing Opposition To Petitions For Reconsideration of BellSouth and Bell Atlantic by the Association for Local Telecommunications Services were served via first class mail, postage prepaid, or by hand delivery to the parties listed below.

  
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